RECLAMATION
Managing Water in the West

Conveyance of Non-Project Treated Effluent Water in Newlands Project Lower Deep Diagonal Drain

Environmental Assessment

Churchill County, Nevada
Mid-Pacific Region
Lahontan Basin Area Office

U.S. Department of the Interior
Bureau of Reclamation
Lahontan Basin Area Office
Carson City, Nevada

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Chapter 1 - Background and Purpose and Need for Action

1.1 Introduction

Bureau of Reclamation (Reclamation) consent is required for conveyance of non-project water in Reclamation facilities. Consent is contingent upon a determination by Reclamation that proposed conveyances would not interfere with Reclamation's use of its facilities and easements. This document is an Environmental Assessment (EA) analyzing the continued conveyance of up to 840 acre-feet per year (af/yr) of non-project treated effluent water through the Reclamation Newlands Project (Project) Lower Diagonal Deep (LDD) Drain. The treated water would flow through the drain from the Naval Air Station Fallon (NAS Fallon) wastewater treatment plant to Stillwater National Wildlife Refuge (Stillwater NWR).

1.2 Project Location

The Reclamation LDD Drain is located in the Lahontan Valley in Churchill County, near Fallon Nevada (Figure 1). The drain runs through NAS Fallon and the terminus of the drain is the Stillwater NWR. The drain is located primarily in a rural area of open space with the surrounding area consisting of primarily desert shrub communities and some agricultural land.

1.3 Background

The Reclamation Act of 1902 authorized the construction of the Project, a trans-basin diversion for agricultural development. The Project provides water from the Truckee and Carson rivers for irrigation and wetlands purposes for approximately 57,000 acres in the Lahontan Valley near Fallon and Fernley in western Nevada. Water is diverted from the Truckee River into the Truckee Canal for the Truckee Division and conveyance to Lahontan Reservoir for storage for irrigation in the Carson Division. Water supply for the Carson Division also comes from the Carson River which flows into Lahontan Reservoir.

The Truckee Carson Irrigation District (District) is responsible for operation and maintenance of Project facilities, including LDD Drain, under a contract with Reclamation. The District is a political subdivision of the State of Nevada, organized and chartered in 1918 for the purpose of representing the water right holders within the boundaries of the Project related to Project operations.

Effluent from the NAS Fallon has been conveyed through Reclamation's LDD Drain to Stillwater NWR since around the 1950s. NAS Fallon constructed a treatment plant in 1995 and treated effluent has been conveyed in the LDD Drain to Stillwater NWR since that time. The effluent flows several hundred feet from the treatment plant to the LDD Drain. Reclamation has never authorized the conveyance of this non-project water in their facilities.

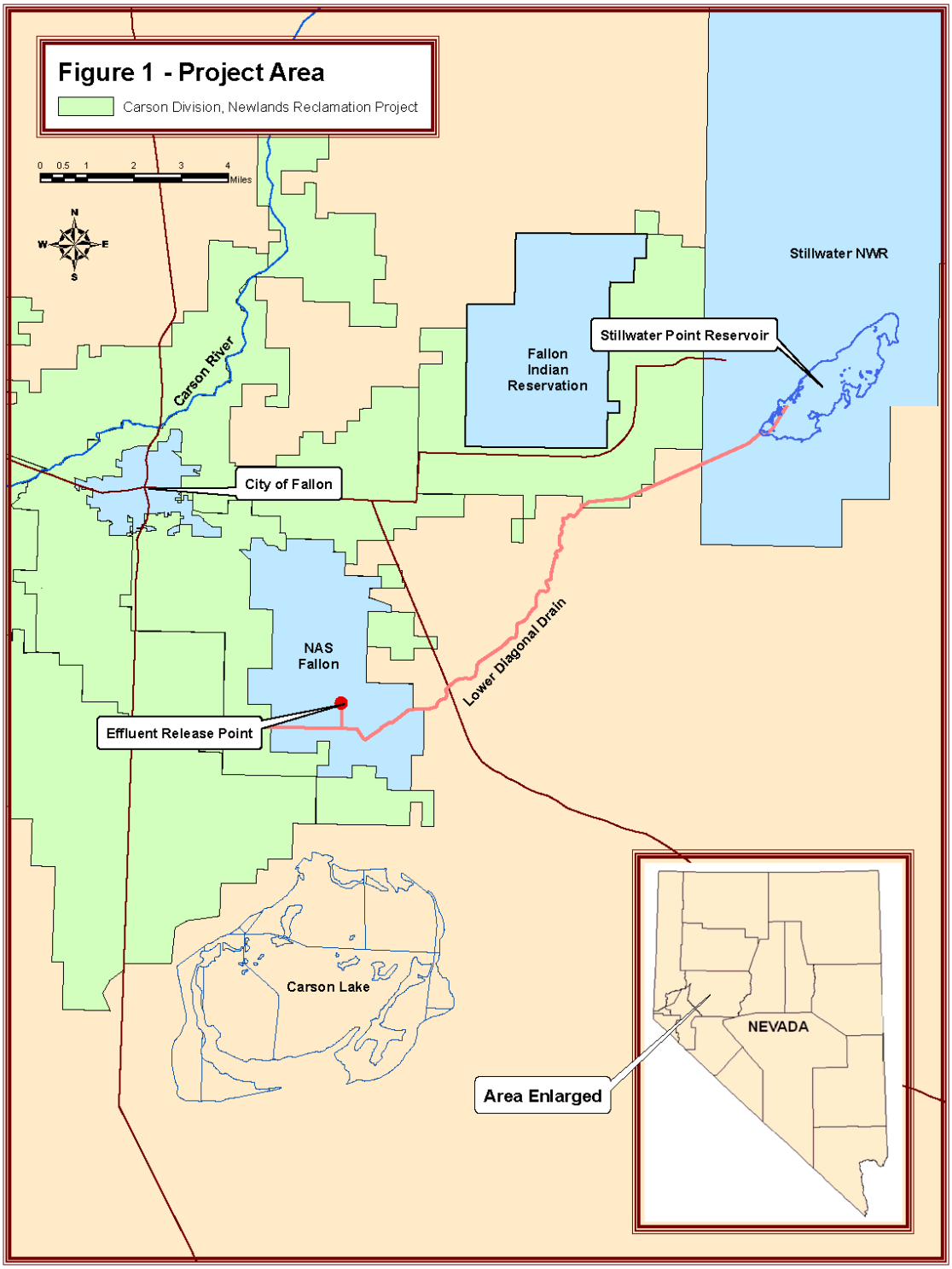
Figure 1 - Project Area
Carson Division, Newlands Reclamation Project
0 0.5 1 2 3 4 Miles
N
W
E
S
Stillwater NWR
Stillwater Point Reservoir
Fallon Indian Reservation
Carson River
City of Fallon
NAS Fallon
Lower Diagonal Drain
Effluent Release Point
Carson Lake
NEVADA
Area Enlarged

The current environmental permit from the Nevada Department of Environmental Protection (NDEP) allows the NAS Fallon to divert 1.16 cubic feet per second (cfs) from their wastewater treatment plant to LDD Drain (Appendix A). A constant flow of 1.16 cfs translates to a maximum allowed amount of about 840 acre-feet per year (af/yr). However, based on records provided by the Navy for the period from February 2002 to September 2007 the average actual amount of treated effluent from the Navy's wastewater treatment plant has been approximately 0.441 cfs or about 320 af/yr. Actual daily flow is 280,000 gallons. Reclamation has no general siting authority or responsibility for the NAS Fallon wastewater treatment plant.

Treated effluent from NAS Fallon was identified as a potential source of wetlands water in the U.S. Fish and Wildlife Service (Service) Final Environmental Impact Statement and Record of Decision for Water Rights Acquisition For Lahontan Valley Wetlands (FEIS and ROD) (USFWS, 1996). The Great Basin wetlands ecosystem encompasses important historical wetlands that once covered vast areas of the Lahontan Valley and provided an important natural habitat for waterfowl, shorebirds, and other wetland-dependent wildlife. The Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II, Public Law 101-618) addressed the need to restore and protect some portion of the historic wetlands habitat.

1.4 Purpose and Need for Action

The purpose of the proposed action is authorization by Reclamation of continued conveyance of NAS Fallon treated effluent water through the LDD Drain to Lahontan Valley wetlands at Stillwater NWR.

1.5 Scope of Environmental Assessment and Decision to be Made

Federal agencies must comply with provisions of the National Environmental Policy Act of 1969 (NEPA). An environmental analysis is required under NEPA to assess the significance of possible environmental, social, and economic impacts to the human environment from the alternatives. The EA serves as the basis for determining whether implementation of the proposal would constitute a major federal action significantly affecting the quality of the human environment.

This EA has been prepared to assist Reclamation's decision-making regarding whether to authorize the continued conveyance of treated effluent through the Project's LDD Drain from NAS Fallon to Stillwater NWR. The scope of analysis in this EA is limited to consideration of whether or not to authorize conveyance of non-project treated effluent through Project facilities. The potential impacts to Lahontan Valley wetlands from receiving treated effluent were fully analyzed in the Service's 1996 FEIS and ROD and are not considered in this EA beyond providing pertinent background and analysis information.

1.6 Authorization

The Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II, Public Law 101-618) Section 206 (a) (3) (A) discusses that the Secretary of the Interior is authorized to "use, modify, or extend on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to [Lahontan Valley] wetlands…."

This authority has been reviewed and confirmed in a memorandum from the Office of the Solicitor, Pacific Southwest Region, dated October 21, 2005 (Appendix B).

Chapter 2 - Alternatives

Reclamation determined that there were no alternative ways to meet the Purpose and Need of continued conveyance authorized by Reclamation in the LDD Drain other than the Proposed Action. Therefore, only the Proposed Action and No Action alternatives are considered in the EA.

Alternative 1. Proposed Action - Authorize Conveyance

Under this alternative, Reclamation would authorize the continued conveyance of treated effluent diverted from NAS Fallon through the Project LDD Drain to Stillwater NWR. Expected flows would be approximately 320 af/yr. up to a maximum of 840 af/yr. NAS Fallon would be responsible for obtaining, complying with, and renewing as necessary the State of Nevada National Pollutant Discharge Elimination System (NPDES) permit for the diversion and conveyance of the treated effluent.

Reclamation would enter into a Memorandum of Agreement (MOA) with NAS Fallon and Stillwater NWR to define the roles and responsibilities of the three entities for the use of federal water diversion, storage and conveyance facilities to deliver water to Lahontan Valley wetlands.

After the MOA is signed, it is expected the U.S. Department of the Navy would apply to the Nevada State Engineer for a primary permit to appropriate its treated effluent. The Service would then apply to the Nevada State Engineer for a secondary permit to appropriate the treated effluent at the treatment site within NAS Fallon and convey the effluent through Reclamation's LDD Drain to wetlands at Stillwater NWR. With the secondary permit the effluent would become a federally-owned water right and the Service would be able to direct the flows to the appropriate wetlands area consistent with existing wetlands management plans.

Alternative 2. No Action

Under this alternative Reclamation would not authorize the continued conveyance of treated effluent water in Reclamation Project facilities from NAS Fallon through the LDD Drain to Stillwater NWR. Current conveyance of treated effluent water from NAS Fallon through the LDD Drain would cease.

Chapter 3 – Affected Environment and Environmental Consequences

3.1.1 Newlands Project Operating Criteria and Procedures (OCAP) Affected Environment

The OCAP is a federal rule that describes how the Project is operated (43 CFR part 418). Its main purposes are to ensure legitimate Project water rights are served; to regulate the timing and amount of water that can be diverted out of the Truckee River to serve Project water rights; and, to minimize the use of water from the Truckee River and maximize the use of water from the Carson River.

3.1.2 Newlands Project Operating Criteria and Procedures (OCAP) Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action

The conveyance of up to 840 af/yr of treated effluent water in the LDD Drain from NAS Fallon would have no effect on existing Project water rights, timing or amount of water diverted from the Truckee River to serve Project water rights. The conveyance of the treated effluent would not change current use of water from either the Truckee or Carson rivers. The proposed primary and secondary water rights permits for the treated effluent would not increase Project demand under OCAP.

The treated effluent (approximately 2 cfs) would be conveyed through existing drainage facilities within existing LDD Drain capacity (>50 cfs) and therefore would not affect Project operations. Treated effluent from NAS Fallon conveyed in Project facilities would not be considered releases to the Project under OCAP (43 CFR Part 418). The delivery of the effluent to Stillwater NWR would not be considered as a Project delivery for OCAP purposes. The deliveries of the treated effluent to Stillwater NWR will not cause adverse effects to Project operations or efficiency. Based on the above findings, Reclamation has determined that the conveyance of the non-project water would not impair the efficiency of the Newlands Project for irrigation or drainage purposes.

Alternative 2. No Action

There would no effect to any of OCAP parameters if the conveyance of the treated effluent wasn't authorized under the No Action Alternative.

3.2.1 Land Use and Economic Affected Environment

The LDD Drain is a Reclamation Project drainage facility constructed on a right-of-way held by the United States. LDD Drain is an unlined drain maintained by the District to ensure capacity and flows. The drain has water in it year round from groundwater as well as the treated effluent

water. Water level in the drain is highest primarily from April through mid-November during irrigation season. The majority of the drain water comes from drains feeding into the LDD.

The NAS Fallon water treatment plant was constructed in 1995 with a 750,000 gallon per day capacity that serves a daily population of 3000 employees and residents.

The Stillwater NWR is located in the Lahontan Valley, about 16 miles East of Fallon, Nevada. It was established in 1949 as a wildlife sanctuary within Stillwater Marsh. In 1990, the refuge boundary was expanded to encompass about 77,500 acres for conservation and management of wetlands and other habitats for fish and wildlife.

3.2.2 Land Use and Economic Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action

Conveyance of the treated effluent water would not be in amounts excess of the >50 cfs capacity available in the LDD Drain. Drain capacity levels would not be impacted by the minor amount of additional flow of treated effluent (average daily flow is 280,000 gallons or approximately 2 cfs).

Reclamation has determined that the conveyance of the non-project water is compatible with use and purpose for which the Project facilities were constructed. No change in the use of Project water would occur under this proposal. Conveyance of the treated effluent water would not interfere with conveyance of Project water through Project facilities. No modification of existing Project facilities would be required for the continued conveyance of treated effluent.

The conveyance as outlined in the tri-party MOA would be on such terms and conditions that would adequately protect the interests of Reclamation, the United States and the Project for which said lands or interests in lands are being administered. The proposed action to authorize continued conveyance of the treated effluent is consistent with Reclamation law and applicable regulations and policies.

The proposed action to authorize conveyance of the treated effluent in Reclamation's LDD Drain allows NAS Fallon to continue to dispose of treated effluent from their treatment plant and to increase the amount of current effluent up to 840 af/yr.

There would be a gain of 320 to 840 af/yr of water delivered to wetlands at Stillwater NWR. Obtaining permits from the Nevada State Engineer would create water rights that would protect these flows from other diversions or uses. With the secondary permit the effluent would become a federally-owned water right and the Service would be able to direct the flows to the appropriate wetlands area consistent with existing wetlands management plans.

Alternative 2. No Action.

The No Action alternative would result in no treated effluent in the LDD Drain. The lack of the relatively small amount of treated effluent water would have no impact on land use or economics of Reclamation facilities or operations.

The No Action alternative would impact NAS Fallon by not allowing the current disposal of their treated effluent water through the LDD Drain to Stillwater NWR. NAS Fallon would have to find an alternate disposal method and mechanism for the treated effluent. This would cause an economic impact related to costs associated with developing and implementing new disposal options.

The No Action Alternative would impact Stillwater NWR by decreasing the amount of inflow of 320 af/yr up to 840 af/yr into the refuge. This would result in not allowing the Service to direct flows of the effluent to the appropriate wetlands area. An economic impact would occur to the Service as an additional 320 to 840 af/yr of water would need to be acquired from other sources to meet the wetlands acreage goal established by Public Law 101-618 and analyzed in the 1996 FEIS.

3.3.1 Water Resources and Quality Affected Environment

There are no natural sources of surface water in the LDD Drain project area beyond agricultural drainage. Agricultural runoff and erosion increases the nutrient and suspended sediment levels of water in the drain. The quality of water in the drain is determined by seasonal flows, water diversion and agricultural activities in the area. Low flows and warm weather result in higher water temperature in the drain.

In the Lahontan Valley three groundwater aquifers have been delineated: shallow, intermediate and deep. The shallow aquifer is nearest the surface extending from the water table to a depth of about 50 feet below ground surface. Infiltration from Project canal and drain systems causes water levels to rise in the shallow aquifer resulting in a water table beneath much of the valley floor that ranges from 5 to 10 feet below ground level (Churchill County, 2004).

3.3.2 Water Resources and Quality Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action

The addition of up to 840 af/yr of treated effluent to the LDD Drain would not result in significant effects to either surface or ground water in the project area. The treated effluent would mix with high levels of agricultural drain water during irrigation season, and with groundwater in the drain outside of irrigation season.

Effluent from the NAS Fallon is treated to a very high level. The NAS Fallon regulated effluent parameters have met the NDEP compliance limitations since construction of their wastewater treatment facility in late 1995.

Temperature, total dissolved solids (TDS) and other necessary standards for the proposed effluent are established by NDEP as part of the NPDES permit process. The permit is designed to meet the Clean Water Act and is subject to Environmental Protection Agency (EPA) approval. NDEP has set specific effluent standards and limits for a variety of parameters for the effluent to be conveyed in the LDD Drain (NDEP Permit NV0110001 Appendix A). These standards include weekly, monthly and annual monitoring requirements and reporting requirements. Permit conditions also address groundwater monitoring wells, facility construction and operation conformance to plans, certified treatment facility operator, and include a list of pollutants that must meet NDEP compliance standards. The effluent wastewater is disinfected with chlorine.

The NDEP permit is within the realm of standard practice for sewage treatment plants and is consistent with domestic discharge (not industrial). The permit does not allow the discharge of substances that would cause a violation of the water quality standards of the State of Nevada. The permit standards are appropriate for the level of activity and type of receiving entity (agricultural drain and terminus reservoir/wetlands).

Any infiltration of water from the relatively small amount of additional effluent in the LDD Drain compared to irrigation and drainage valley-wide would constitute only very minor addition to the shallow aquifer. Water quality effects in the aquifer from infiltration would also be negligible.

This conveyance of the treated effluent that meets NDEP water quality standards would result in no significant effect on either groundwater or surface water quality, or to resources and uses dependent on such water. No significant effect would occur to water quality or to dependent resources and uses including wildlife in the LDD Drain or fish and wildlife at Stillwater NWR.

Alternative 2. No Action

Under the No Action alternative there would be no mixing of drain water with treated effluent water. There would be a slightly lower level of flows occurring in the LDD Drain and 320 af/yr. up to 840 ac/yr less water flowing into Stillwater NWR. Water quality changes in both the drain and at the refuge would be minimal.

3.4.1 Public Health and Safety Affected Environment

The LDD Drain runs primarily through open space desert shrub communities and some agricultural areas, as well as through the NAS Fallon. It is a mostly isolated drain with little or no public contact or use. District employees perform routine operation and maintenance activities in and adjacent to the drain.

3.4.2 Public Health and Safety Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action

The proposed action is conditioned upon NAS Fallon diversion of treated effluent into the LDD Drain continuing to meet NDEP environmental permit standards and federal Clean Water Act standards delegated to the State of Nevada for enforcement. The treated effluent does not qualify as a hazardous material. Both the LDD Drain and the Stillwater NWR areas proposed to convey/receive the treated effluent are not open to swimming, bathing or fishing. The treated effluent would not mix with any current or planned sources of municipal water supplies.

Alternative 2. No Action

No impacts would occur to the health or safety of the public if the treated effluent is not conveyed in the LDD Drain. The NAS Fallon would have to find an alternative method and location of disposal of the treated effluent. It is expected that the relocation would not result in any public health or safety concerns as the Navy would be required to meet all applicable federal, state and local laws for the wastewater disposal.

3.5.1 Vegetation Affected Environment

Plant communities within the affected area are described in four major groupings: wetlands, riparian, agricultural, and desert shrub. The LDD Drain has very little riparian vegetation; above the high water mark is primarily desert shrub (sagebrush, rabbitbrush, greasewood, etc.).

Stillwater NWR biologists have shown that diversity of both emergent and submergent vegetation in Carson Lake and Stillwater marshes has substantially declined over the past 20 years (Kerley and others, 1993). Changes in water regimes, such as discontinuing releases for winter power generation, have impacted wetland vegetation by increasing the presence of salt-tolerant species while reducing the density of cattails, a salt-sensitive species.

Noxious weed species occur throughout the Lahontan Valley, including along and adjacent to Project drains and canals and at NAS Fallon and the Stillwater NWR. Many entities are involved in multi-agency weed management activities in the valley including: the District, Stillwater NWR, Churchill County, Nevada State Parks, Bureau of Land Management, Nevada Department of Wildlife, NAS Fallon, Lahontan Conservation District, Churchill County Coordinated Weed Management Area, private landowners and others.

The District is responsible for weed management along Project facilities, including drains such as LDD Drain. Portions of the LDD Drain may also receive noxious weed treatment from the NAS Fallon and private landowners along the drain reach. Stillwater NWR has implemented an integrated, multi-agency approach to noxious weeds management at the refuge involving local, state, and federal agencies utilizing mechanical, cultural and chemical control methods.

3.5.2 Vegetation Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action.

The estimated flow of 320 af/yr from NAS Fallon would be similar to present flow conditions and could involve an increase of up to the allowable 840 af/yr. The current 320 af/yr flow helps sustain small areas of vegetation along the LDD Drain and beneficial wetlands-dependent plant species at the refuge. These areas of vegetation could decrease slightly if the flow was increased to 840 af/yr. and small bands of vegetation were inundated. The amount of existing vegetation and any decreases in vegetation are insignificant compared to the large amount of desert shrub vegetation in the surrounding areas of the project area.

Noxious weed invasions colonize newly exposed lands. Continuing the flow of the treated effluent or increasing the amount could slightly decrease the potential for invasion of noxious weeds along small bands of the LDD Drain and small areas in the wetlands at Stillwater NWR.

Alternative 2. No Action.

Under this alternative, flows from NAS Fallon would not occur in the LDD Drain or be allowed to reach wetlands at Stillwater NWR. Due to the relatively low amount of treated effluent water that is currently conveyed, there would be only minor expected changes to vegetation along the LDD Drain. If the treated effluent isn't delivered to the refuge it would reduce 64 to 160 acres of wetlands habitat, which is not a significant amount compared to the approximate 14,000 acres of wetlands in the refuge.

3.6.1 Fish and Wildlife Affected Environment

Lahontan Valley consists of varying habitat types including wetlands, desert shrub communities, agriculture and riparian that supports a diversity of fish and wildlife. The LDD Drain runs through or is in the vicinity of all of these types of habitat.

Historically, runoff from the Sierra Nevada (via the Carson River) constituted the primary inflow to the Lahontan Valley wetlands. Upstream diversions required for agriculture have steadily dried the Stillwater marshes, Carson Lake, and Carson Sink in all but the wettest years (Kelly and Hattori, 1985; Morrison, 1964; Townely, 1977). Since the early 1900s, the Lahontan Valley wetlands have subsisted on seepage losses and drainflows from the Project irrigation system, water from winter power generation, and from periodic spills in high water years.

Fish

The LDD Drain does not support fish. Non-game fish are found in Lahontan Valley wetlands, but reduced inflows from drought and implementation of the Project OCAP have affected their habitat. Non-game fish include: carp, Sacramento blackfish, tui chub, Lahontan redside shiners, speckled dace, Lahontan mountain suckers, Tahoe suckers, fathead minnows, and mosquito fish.

Waterfowl

Some duck species such as mallards, cinnamon teal and wood ducks commonly nest along Project drains and canals. Lahontan Valley wetlands are important for migrating waterfowl and are one of the most important duck breeding grounds in Nevada. About 67 percent of the waterfowl nesting activity occurs at Stillwater NWR and Carson Lake, with much of the remainder occurring on secondary wetlands.

Shorebirds

The Lahontan Valley wetlands provide important habitat for a variety of migrating shorebirds. In 1988 Stillwater NWR and the Carson Lake wetlands were elected as sites of hemispheric importance by the Western Hemispheric Shorebird Reserve Network. Shorebirds species exhibit incidental use of habitat along Project drains and canals.

Colony Nesting and Other Marsh Birds

Substantial numbers of colony nesting and other marsh birds migrate through and nest in the Lahontan Valley wetlands. Colony nesting birds include the white-faced ibis, black-crowned night heron, great egret and snowy egret. Colony nesting and other marsh birds exhibit incidental use of habitat along Project drains and canals.

Mammals

Beaver, muskrats, and raccoons are the most common mammals found in the marsh, riparian areas, drains and canals. Other common mammals that inhabit the marsh and riparian areas include the Western harvest mouse and long-tailed voles. The most common carnivore in the valley is the coyote.

3.6.1 Fish and Wildlife Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action.

Implementing the proposed action would result in 320 to 840 af/yr of water from NAS Fallon conveyed through the LDD Drain to the wetlands at Stillwater NWR. The water would continue to support minor amounts of habitat along the drain and between 64 to 160 acres of habitat for waterfowl, shorebirds and other wetlands-dependent species at the refuge, which is not a significant amount compared to the approximate 14,000 acres of wetlands in the refuge. The proposed conveyance of treated effluent would benefit the wetlands by adding water for aquatic habitat, though the amount is not significant compared to the amount of existing wetlands. The water quality of the treated effluent meets NDEP standards and there are no known water quality adverse effects to fish, wildlife or other resource values or uses in the LDD Drain or at the refuge.

Alternative 2. No Action.

320 to 840 af/yr of water from NAS Fallon would not be conveyed through the LDD Drain or delivered to wetlands at Stillwater NWR. Minor amounts of desert shrub habitat along the drain would be impacted and the refuge would lose between 64 to 160 acres of wetlands that provide habitat for waterfowl, shorebirds and other wetlands-dependent species. The loss of desert shrub habitat is not significant compared to the large amount of surrounding desert shrub habitat and the amount of wetlands lost is not significant compared to the approximate 14,000 acres of wetlands in the refuge.

3.7.1 Threatened and Endangered Species Affected Environment

Section 7 of the Endangered Species Act of 1973, as amended (ESA), prohibits Federal agencies from authorizing, funding, or carrying out activities that are likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. By consulting with FWS before initiating projects, agencies review their actions to determine if these could adversely affect listed species or their habitat. Through consultation, FWS works with other Federal agencies to help design their programs and projects to conserve listed and proposed species. Regulations for the consultation process can be found at 50 Code of Federal Regulations (CFR) part 402.

3.7.2 Threatened and Endangered Species Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action and Alternative 2. No Action

The Service has determined there are no federally listed or candidate plant or wildlife species in the project action area, therefore neither alternative has the potential to affect any listed or candidate species or their habitat.

3.8.1 Cultural Resources Affected Environment

Cultural resources is a term used to describe both ‘archaeological sites’ depicting evidence of past human use of the landscape and the ‘built environment’ which is represented in structures such as dams, roadways, and buildings. The National Historic Preservation Act (NHPA) of 1966 is the primary legislation which outlines federal agencies’ responsibilities to consider cultural resources. Section 106 of the NHPA requires the Federal Government to take into consideration the effects of an undertaking on historic properties, cultural resources listed, or eligible for listing, on the National Register of Historic Places (National Register).

Implementing regulations for Section 106 (36 CFR Part 800) describe the process that Federal agencies must take to identify historic properties and determine the level of effect that a proposed undertaking would have on such properties. In summary, it must first be determined whether the action is the type of activity that has the potential to affect historic properties. If the action is that type of activity, then the agency must identify the area of potential effects (APE), determine if historic properties are present within the APE, determine the effect that the undertaking would have on historic properties, and seek to resolve any adverse effects through

consultation with the State Historic Preservation Officer (SHPO) and any other consulting parties.

Several Newlands Project features have been listed on the National Register as part of a Multiple Property Listing. The LDD Drain has been recommended eligible to the National Register as a contributing element of the Newlands Project Multiple Property Listing (Hardesty and Buhr 2001), though Reclamation has not formally consulted with the SHPO on the eligibility of the LDD Drain.

3.8.2 Cultural Resources Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action.

The proposed action to authorize continued conveyance of treated effluent in the LDD Drain and subsequent administrative action of Nevada State Engineer permitting is not the type of activity that has the potential to affect historic properties pursuant to the regulations at 36 CFR Part 800.3(a)(1). The treated effluent water would be conveyed in existing drain facilities. No ground disturbing activities, including excavation or construction are required to convey the water. The relatively minor amount of water that can be conveyed in the drain would not result in measurable increases of water levels in either the LDD Drain or at Stillwater NWR wetlands. The no potential to affect historic properties determination clarifies that no cultural resources would be impacted from the proposed action.

Alternative 2. No Action

No impacts to cultural resources would occur if the conveyance of treated water did not take place under the No Action Alternative.

3.9. 1 Indian Trust Resources Affected Environment

Indian trust resources are legal interests in property or natural resources held in trust by the United States for Indian Tribes or individuals. The Secretary is the trustee for the United States on behalf of Indian Tribes; all Interior bureaus share the Secretary's duty to act responsibly to protect and maintain Indian trust resources reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders.

There are two federally-recognized tribes potentially impacted by the proposed action. The two tribes are the Pyramid Lake Paiute Tribe (Pyramid Lake Indian Reservation including Pyramid Lake), and the Fallon Paiute-Shoshone Tribes (Fallon Paiute-Shoshone Reservation and Fallon Colony). Trust resources of these tribes include land, water rights, trust income, and fish and wildlife; incomes are derived from these resources.

Fallon Paiute-Shoshone Tribes/ Fallon Indian Reservation and Colony

The Fallon Paiute-Shoshone Indian Reservation is located in Churchill County in west-central Nevada, approximately 10 mile northeast of Fallon and 65 miles east of Reno and Carson City. The Reservation includes members of the Paiute and Shoshone Tribes. The Fallon Indian Colony is located on 60 acres and Colony land is used for residential and commercial purposes.

Water rights on and appurtenant to the reservation are served by Project facilities pursuant to OCAP and are part of the Carson Division. Currently, 5,513 of the 8,156 acres of the reservation are water righted. Approximately 1,800-3,175 acres have been irrigated.

The Fallon Tribes entered into a settlement agreement that was ratified by Congress as Title I of P.L. 101-618, or the Fallon Paiute-Shoshone Indian Tribes Water Rights Settlement Act of 1990. Section 103 of P.L. 101-618 limits annual water use on the reservation to 10,587.5 acre-feet (equivalent to 3,025 acres). It also, however, permits the Tribes to acquire up to 2,415.3 acres of land and up to 8,453.55 acre-feet of water rights. These water rights may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada.

The Tribe has dedicated reservation acreage to be used for wetland habitat for wildlife. The Bureau of Indian Affairs entered into an agreement with the Service in 1995 to acquire water rights for reservation wetlands; under that agreement, 1,613.4 acre-feet of water rights have been acquired.

P.L. 101-618 established the $43-million Fallon Paiute-Shoshone Tribal Settlement Fund; interest on the Settlement Fund may be spent according to the Fallon Tribes' investment and management plan for this fund.

Pyramid Tribe/Pyramid Lake Indian Reservation

The reservation of the Pyramid Lake Paiutes, located in Washoe County north of Reno and including Pyramid Lake, presently covers 475,085 acres. P.L. 101-618 affirmed that "all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Tribe (Section 210[b][1])."

The Federal actions that set aside Pyramid Lake Indian Reservation explicitly reserved Pyramid Lake for the Tribe's benefit. The Pyramid Tribe is allocated for irrigation an amount not to exceed 4.71 acre-feet per acre for 3,130 acres of bottomland farm (14,742 acre-feet) (Claim No. 1) and another 5.59 acre-feet per acre for 2,745 acres of benchlands (15,345 acre-feet) (Claim No. 2).

The Pyramid Lake fishery remains one of the cultural mainstays of the Pyramid Tribe. The Tribal fishery program operates hatcheries at Sutcliffe and Numana. Tribal hatcheries raise

both the threatened LCT and endangered cui-ui. Along with conserving fish, the Pyramid Tribe manages and controls fishing and hunting rights on the reservation.

P.L. 101-618 established the $25-million Pyramid Lake Paiute Fisheries Fund and the $40-million Pyramid Lake Paiute Economic Development Fund. The Pyramid Tribe has complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund; funds are available to the Tribe when the Truckee River Operating Agreement becomes effective.

3.9.2 Indian Trust Resources Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action and Alternative 2. No Action

No fish, wildlife, water rights, land or trust income resources of either tribe would be affected under either alternative. The two reservations are not in the proximity of the LDD Drain and therefore land, fish and wildlife resources of the Tribe would not be directly affected. The conveyance of the treated effluent would have no impact on the timing or amount of use of Project water from either the Carson or Truckee River and would not impact satisfying the exercise of any tribal water rights.

3.10.1 Environmental Justice Affected Environment

Executive Order 12898 (1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," provides that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Environmental justice programs promote the protection of human health and the environment, empowerment via public participation, and the dissemination of relevant information to inform and educate affected communities.

Environmental Protection Agency (EPA) guidelines for evaluating potential adverse environmental effects of projects require specific identification of minority populations when a minority population either exceeds 50 percent of the population of the affected area or represents a meaningfully greater increment of the affected population than of the population of some other appropriate geographic unit.

3.10.2 Environmental Justice Environmental Consequences

Alternative 1. Authorize Conveyance - Proposed Action and Alternative 2. No Action

As identified in Chapter 5, "Consultation and Coordination," public involvement, consultation and coordination with potentially affected publics have occurred for the proposed action. A review of "Land Use and Economics", "Public Health and Safety", and "Indian Trust Resources" sections in this chapter has shown that the proposed action does not involve facility construction,

population relocation, health hazards, hazardous waste, property takings, or substantial economic impacts. Consequently, it is concluded that implementing the proposed action would have no adverse human health or environmental effects on minority or low-income populations as defined by environmental justice policies and directives.

Neither alternative would disproportionately affect minority or low-income populations within the community.

3.11 Unavoidable Adverse Impacts

Unavoidable adverse impacts are assumed to be long-term impacts to resources which would be affected by implementation of an action alternative. Because the proposed action involves only authorizing the continued conveyance of treated effluent water in an existing drain, no unavoidable adverse impacts are expected.

3.12 Irreversible and Irretrievable Commitments of Resources

Irreversible and irretrievable commitments are considered to be the permanent reduction or loss of a resource. No irreversible and irretrievable commitments of resources would occur under either alternative.

3.13 Cumulative Effects

There are no known cumulative effects to the human environment from continuing the proposed LDD Drain conveyance combined with past actions and any known current or reasonably foreseeable future actions.

3.14 Environmental Commitments

A State of Nevada Pollutant Discharge Elimination System (NPDES) permit is required for the proposed action. NAS Fallon is responsible for obtaining, complying with, and renewing as necessary the State of Nevada permit. The current 5-year permit is dated June 22, 2007 with an expiration date of June 21, 2012.

The permit includes multiple standards for water quality monitoring. If monitoring in the future documents significant water quality impacts for the treated effluent, required mitigation would be implemented by NAS Fallon to resolve the impacts.

The Navy and the Service must comply with all applicable Reclamation laws, regulations and policies as may be amended and supplemented, and the rules and regulations promulgated by the Secretary under Reclamation law. The Navy and Service must also apply with other pertinent federal, state and local laws.

Chapter 4 – Consultation and Coordination

4.1 Public Involvement

The EA will be made available to the public for a 30-day review period. Reclamation will put out a news release on availability of the EA to local Fallon newspapers and send a notice to a list of potentially interested parties. The EA will be posted on Reclamation's Mid-Pacific website and mailed to individuals requesting a copy. Paper copies of the EA will be available in the Beck Library Western Nevada Community College - Fallon Campus and the Churchill County Library, both located in Fallon.

4.2 Agency Coordination

Reclamation prepared the EA in coordination with the Service. Reclamation consulted with the District on the proposed project to ascertain if there were issues related to the continued conveyance of the treated effluent (pers. comm. Dave Overvold). Reclamation also consulted with the Nevada Department of Environmental Protection for clarification on water quality parameters of the NAS Fallon Sewage Treatment Plant permit (pers. comm. Rob Saunders).

4.3 Tribal Consultation

Scoping letters were sent to the Pyramid Lake Paiute Tribe and the Fallon Paiute-Shoshone Tribe pursuant to federal legislation and executive orders concerning Native American government to government consultation, including NEPA and Indian Trust Assets.

4.4 Other Federal Laws, Regulations, and Executive Orders

In undertaking the proposal, the Reclamation and the Service will comply with the following federal laws, executive orders, and legislative acts: Floodplain Management (Executive Order 11988); Intergovernmental Review of Federal Programs (Executive Order 12372); Protection of Historical, Archaeological, and Scientific Properties (Executive Order 11593); Protection of Wetlands (Executive Order 11990); Responsibilities of Federal Agencies to Protect Migratory Birds (Executive Order 13186); Management and General Public Use of the National Wildlife Refuge System (Executive Order 12996); Hazardous Substances Determinations (Secretarial Order 3127); and the National Wildlife Refuge System Administration Act, as amended.

Chapter 5 – List of Preparers

Caryn Huntt DeCarlo, Natural Resource Specialist, B.S. and M.S. Natural Resource Management, University of Nevada Reno, 1986 and 1989. 20 years environmental management with the Forest Service and Bureau of Reclamation.

Richard Grimes, Supervisory Realty Specialist, B.S. Business Administration, U.C. Berkeley, 1979. 13 years with FWS acquiring land and water for Nevada and Southern California refuges.

Chapter 6 – References and Personal Communications

References

Churchill County. 2004. Churchill County Water and Wastewater System Project. Environmental Report. Prepared by Brown and Caldwell, Carson City, NV.

Hardesty, D.L., and L. Buhr. 2001. The Newlands Project, Nevada: Evaluating National Register Eligibility. Report Prepared for the U.S. Department of Interior, Bureau of Reclamation, Mid-Pacific Region, Sacramento, California. University of Nevada, Reno.

Kelly, R.L. and E. Hattori. 1985. Present environment and history. *In*: The archaeology of Hidden Cave, Nevada. Thomas, D.H. eds., pp 39-46. Anthropological Papers of the American Museum of Natural History, 61 (1):39-46. New York, New York.

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Morrison, R.B. 1964. Lake Lahontan – Geology of southern Carson Desert, Nevada: U.S. Geological Survey Professional Paper 401. Reno, Nevada.

Townely, J.M. 1977. Turn this water into gold: the story of the Newlands Project. Nevada Historical Society, Reno, Nevada.

U.S. Fish and Wildlife Service. 1996. Final Environmental Impact Statement. Water Rights Acquisition for Lahontan Valley Wetlands. Churchill County, Nevada. Vol.1, September 1996. U.S. Department of the Interior, Fish and Wildlife Service. Region 1, Portland, Oregon.

U.S. Fish and Wildlife Service. 1996. Final Environmental Impact Statement. Water Rights Acquisition for Lahontan Valley Wetlands. Churchill County, Nevada. Record of Decision, November 1996. U.S. Department of the Interior, Fish and Wildlife Service. Region 1, Portland, Oregon.

Personal Communications

Overvold, Dave. Truckee-Carson Irrigation District Project Manager. Phone call August 20, 2008.

Saunders, Robert J. Nevada Department of Environmental Protection Bureau of Water Pollution Control Staff Engineer. Phone call August 20, 2008.

Chapter 7 – Appendices

Appendix A NDEP Permit NV0110001

Appendix B Memorandum Office of the Solicitor, Pacific Southwest Region, October 21, 2005

Appendix A - NDEP Permit NV0110001

Nevada Division of Environmental Protection

AUTHORIZATION TO DISCHARGE

In compliance with the provisions of the U. S. Clean Water Act as amended (33 U.S.C. et seq; the "Act"), and Chapter 445A of the Nevada Revised Statutes,

Environmental Dept
Naval Air Station Fallon
4755 Pasture Rd Bldg 307 Floor 3
Fallon NV 89496

is authorized to discharge from:

Wastewater Treatment Plant
Latitude: 39º 23' 46" N
Longitude: 118º 41' 22" W
T18N R29E S23

to an unnamed tributary of Lower Deep Diagonal Drain

in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

This permit shall become effective on June 22, 2007.

This permit and the authorization to discharge shall expire June 21, 2012.

Signed this 22nd day of June, 2007.

Robert J Saunders
Staff Engineer
Bureau of Water Pollution Control

PART I

I.A. EFFLUENT LIMITATIONS, MONITORING REQUIREMENTS AND CONDITIONS

I.A.1. During the period beginning on the effective date of this permit, and lasting until the permit expires, the Permittee is authorized to discharge from the wastewater treatment plant's chlorine contact chamber to the unnamed tributary of Lower Diagonal Drain adjacent to the plant (Outfall 001). Effluent samples taken in compliance with the monitoring requirements specified below shall be taken after chlorination but prior to discharge to the ditch. The discharge shall be limited and monitored by the Permittee as specified below.

Table I.A.1

Parameters mg/l except as noted		**Effluent Discharge Limitations**		**Monitoring Requirements**	
		30 Day Average	Daily Maximum	Measurement Frequency	Sample Type
Flow, MGD		0.75	m & r	continuous	meter
BOD_5		30	45	weekly	composite
TSS		30	45	weekly	composite
Fecal Coliform, cfu/100 ml		200	400	weekly	discrete
pH, s.u.		-	6.5 - 9.0	weekly	discrete
TPH (C6 - C38)		-	1	monthly	discrete
Temperature, °C		-	34	monthly	meter
Total Residual Chlorine		-	m & r	monthly	discrete
Total Dissolved Solids		-	m & r	monthly	discrete
Nitrogen Species report as N	Kjeldahl	-	m & r	monthly	discrete
	Ammonia	-	m & r	monthly	discrete
	Nitrate	-	m & r	monthly	discrete
	Nitrite	-	m & r	monthly	discrete
	Total	-	10	monthly	discrete
Total Phosphorus		-	m & r	monthly	discrete
Arsenic		-	m & r	quarterly	discrete
Priority Pollutants [1], µg/l		-	m & r	annually	discrete

Note: m & r = monitor & report
1 Attachment A

I.A.2 In addition to the permit limits listed in the table above, the Permittee shall demonstrate that the 30 day average percent removal is not less than 85% removal for BOD_5 and

TSS. The 30 day percent removal shall be reported on Discharge Monitoring Reports forms and submitted quarterly.

I.A.3. The groundwater monitoring wells shall be sampled quarterly with a discrete sample and analyzed for TDS, chlorides, total nitrogen, and depth to groundwater, and submitted in accordance with Part I.B.2 of this permit. If the total nitrogen concentration increases to 7 mg/l, plans for an alternate disposal facility shall be submitted to the Division for approval; if the concentration increases to 9 mg/l, construction of the approved alternate facility must begin; if the concentration increases to 10 mg/l the discharge to groundwater must cease.

I.A.4. The treatment facility shall be operated by a Nevada Certified Class III Operator. The Discharge Monitoring Reports (DMRs) must be signed by the facilities highest ranking certified operator, or the person directly responsible for operating the facility. The first DMR submitted under this permit must include the written designation of certified operator (required by Part III A.2) as the authorized representative to sign the DMRs. If the certified operator in responsible charge changes, a new designation letter must be submitted.

I.A.5. The collection, treatment and disposal facilities shall be constructed in conformance with plans approved by the Administrator. The plans must be approved by the Administrator prior to the start of construction. All changes to the approved plans must be approved by the Administrator.

I.A.6. The facility shall be operated in accordance with the Operations and Maintenance (O&M) Manual which must be approved by the Administrator.

I.A.7. **Annual Fee** The Permittee shall remit an annual review and services fee in accordance with NAC 445A.232 starting July 1, 2007 and every year thereafter until the permit is terminated.

I.A.8. There shall be no objectionable odors from the collection system, treatment facility or disposal area, or biosolids treatment, use, storage or disposal area.

I.A.9. There shall be no discharge of substances that would cause a violation of the water quality standards of the State of Nevada.

I.A.10. There shall be no discharge from the collection, treatment and disposal facilities except as authorized by this permit.

I.A.11. The treatment and disposal facility shall be fenced and posted.

I.A.12. There shall be no discharge of floating solids or visible foam in other than trace amounts.

I.A.13. **Narrative Standards** *NAC 445A.121* Discharges shall not cause the following standards to be violated in any surface waters of the state. Waters must be free from:

a. substances that will settle to form sludge or bottom deposits in amounts sufficient to be unsightly, putrescent or odorous;

b. floating debris, oil, grease, scum, and other floating materials in amounts sufficient to be unsightly;
c. materials in amounts sufficient to produce taste or odor in the water or detectable off-flavor in the flesh of fish or in amounts sufficient to change the existing color, turbidity or other conditions in the receiving stream to such a degree as to create a public nuisance;
d. high temperature, biocides, organisms pathogenic to human beings, toxic, corrosive or other deleterious substances at levels or combinations sufficient to be toxic to human, animal, plant or aquatic life;
e. radioactive materials must not result in accumulations of radioactivity in plants or animals that result in a hazard to humans or harm to aquatic life;
f. untreated or uncontrolled wastes or effluents that are reasonably amenable to treatment or control;
g. substances or conditions which interfere with the beneficial use of the receiving waters.
h. The narrative standards are not considered violated when the natural conditions of the receiving water are outside the established limits, including periods of high or low flow. Where effluents are discharged to such waters, the discharges are not considered a contributor to substandard conditions provided maximum treatment in compliance with permit requirements is maintained.

I.A.14. **Biosolids**

a. The Permittee shall ensure that all biosolids generated at the facility, including solid waste screening and sewage sludge, shall be used or disposed of in accordance with the applicable sections of the following regulations whether the Permittee uses or disposes of the biosolids itself or transfers them to another party for further treatment, use or disposal:
   i. 40 CFR Part 503: for non-hazardous biosolids that are land applied, placed in surface disposal sites (dedicated land disposal sites or monofills), or incinerated;
   ii. 40 CFR Part 258: for biosolids disposed of in municipal solid waste landfills as approved by the Administrator and the County;
   iii. 40 CFR Part 257: for all biosolids use and disposal practices not covered under 40 CFR Parts 258 or 503;
   iv. 40 CFR Part 261 for hazardous biosolids or 40 CFR Part 761 for biosolids with a PCB concentration greater than 50 mg/kg.
   v. The Permittee is responsible for informing any biosolid preparer, applier, or disposer of the requirements that they must comply with and the applicable regulations listed above.

b. If biosolids are stored at any facility for over two years from the time they are generated, the Permittee shall notify the Division within 30 days and shall ensure compliance with the requirements of surface disposal at 40 CFR Part 503 C, or must submit written notification to the Division and EPA with the information listed at 40 CFR Part 503.20 (b) demonstrating the need for longer temporary storage.

c. Biosolids treatment, storage or disposal facilities shall be designed to divert

stormwater run-on for the 100 year storm event, and be designed to prevent erosion which could cause biosolids to run-off.

d. The Permittee shall ensure that biosolids haulers take all necessary measures to contain the biosolids.

e. Facilities that generate and dispose of sewage sludge shall monitor the concentrations of arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc and report in mg/dry kg of sludge; the pathogen density requirements in 40 CFR Part 503.32 (a) and (b)(2) through (4) and the vector attraction reduction requirements in Part 503.33(b)(1) through (8) at the frequencies listed below.

Dry Sludge Disposal Rate metric tons/yr	**Frequency**
0 < rate < 290	each year
290 ≤ rate < 1,500	once a quarter
1,500 ≤ rate < 15,000	once every two months
15,000 ≤ rate	once a month

i. Biosolids to be land applied shall be tested for organic nitrogen as N, ammonia as N, nitrate as N, and total nitrogen as N, at the frequency required above.

ii. Biosolids shall be characterized annually pursuant to 40 CFR Part 261 to determine if they are hazardous.

f. The Permittee shall comply with the following notification requirements either directly or through contractual arrangements with a biosolids management contractor:

i. If biosolids are shipped to another state or to Indian lands, the Permittee shall send notice of the shipment to the state permitting authorities, the EPA Regional Office of the region receiving the biosolids or the Indian authorities.

ii. For land application or surface disposal sites, the Permittee shall notify the Division 60 days prior to shipping any biosolids to enable the site to obtain a permit.

g. **Annual Biosolids Monitoring Report (ABMR)** The Permittee shall submit an ABMR by **February 19th** of each year for the period covering the previous calendar year. The report shall contain all the required biosolids analytical data, the volume of biosolids generated that year, any volume accumulated from previous years, descriptions of pathogen and vector attraction reduction methods and the required certifications as required by 40 CFR Parts 503.17 and 27, the names, mailing and street addresses and telephone numbers of all facilities which received biosolids for storage, disposal, use, treatment, land application or any other use or disposal methods not mentioned and the volume of biosolids taken to each facility.

h. The Permittee shall evaluate the pretreatment program limits to determine if the limits are adequate to achieve the metals concentrations found in Table 3 of Part 503.13. The Permittee shall submit the evaluation conclusions, and any recommended actions to be taken in the pretreatment program. The Report shall be included with the ABMR.

I.A.15. **Schedule of Compliance**

a. The Permittee shall implement and comply with the provisions of the schedule of compliance after approval by the Division, including in said implementation and compliance, any additions or modifications which the Division may make in approving the schedule of compliance.
b. The Permittee shall achieve compliance with the effluent limitations upon issuance of the permit.
c. The permittee shall submit a plan for evaluation and repair of the collection system by the 2 yr anniversary of the effective date of this permit. The plan shall be implemented upon approval by the Division.

I.B. MONITORING AND REPORTING

I.B.1. **Monitoring**

a. **Representative Samples** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

b. **Test Procedures**

i. Analyses shall be conducted by a "certified laboratory" using an "approved method of testing", as defined at NAC 445A.0564 and NAC 445A.0562, respectively.
ii. Unless otherwise allowed by the Division, detection limits shall be half the discharge limit or less, or, if there is no discharge limit, half the applicable water quality criteria or less, or, if there is no limit or criteria, the lowest reasonably obtainable using an approved method.

c. **Recording the Results** For each measurement or sample taken pursuant to the requirements of this permit, the Permittee shall record the following information:

i. The exact place, date, and time of sampling;
ii. The dates the analyses were performed;
iii. The person(s) who performed the analyses;
iv. The analytical techniques or methods used; and
v. The results of all required analyses.

d. **Additional Monitoring by Permittee** If the Permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated on the DMR.

e. **Records Retention** All records and information resulting from the monitoring activities, permit application, and reporting required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recordings from continuous monitoring instrumentation, shall be retained for a minimum of three (3) years, or longer if required by the Administrator. Records of monitoring information required by this permit related to the Permittee's sewage sludge use and/or disposal activities shall be retained for a period of at least 5 years or longer as required by 40 CFR 503.

f. **Modification of Monitoring frequency and Sample Type** After considering monitoring data, stream flow, discharge flow and receiving water conditions, the Administrator, may for just cause, modify the monitoring frequency and/or sample type by issuing an order to the Permittee.

I.B.2. **Reporting**

a. **Annual Reports**
The fourth quarter report shall contain a plot of concentration (y-axis) versus date (x-axis) for all effluent parameters monitored per Table I.A.1 (except Attachment A). The plot shall include data from the preceding five years, if available. Any data point from the current year that is greater than the limits in Part I.A.1 must be explained by a narrative.

b. **Quarterly Reporting** Monitoring results obtained pursuant to Section I.A of the permit for the previous three (3) month period shall be summarized for each month and reported on a Discharge Monitoring Report (DMR) form. Any data submitted in excess of the limits of Part I.A.1 must be explained by a narrative. The DMR is to be received in this office no later than the 28th day of the month following the completed reporting period. The reporting periods are January through March, April through June, July through September, and October through December. The first report is due on April 28, 2007. Laboratory results for analyses conducted by outside laboratories must accompany the DMR.

c. **Compliance Report** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

d. **Other information** Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Administrator, it shall promptly submit such facts or information.

e. **Planned changes** The Permittee shall give notice to the Administrator as soon as possible of any planned physical alterations of additions to the permitted facility. Notice is required only when the alteration or addition to a permitted facility;
i. May meet one of the criteria for determining whether a facility is a new source (40 CFR 122.29(b)); or
ii. Could significantly change the nature or increase the quantity of pollutants

discharged; or

iii. Results in a significant change to the Permittee's sludge management practice or disposal sites.

f. **Anticipated non-compliance** The Permittee shall give advance notice to the Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

g. An original signed copy of all reports required herein shall be submitted to the State at the following address:

Compliance Coordinator
Bureau of Water Pollution Control
Nevada Division of Environmental Protection
901 S Stewart St Ste 4001
Carson City, Nevada 89701-5249

I.B.3. **Definitions**

a. The "30-day average discharge" means the total discharge during a month divided by the number of samples in the period that the facility was discharging. Where less than daily sampling is required by this permit, the 30-day average discharge shall be determined by the summation of all the measured discharges divided by the number of samples during the period when the measurements were made.

b. The "daily maximum" is the highest measurement during the monitoring period.

c. The "30-day average concentration", other than for fecal coliform bacteria, means the arithmetic mean of measurements made during a month. The "30-day average concentration" for fecal coliform bacteria means the geometric mean of measurements made during a month. The geometric mean is the "n^{th}" root of the product of "n" numbers. Geometric mean calculations where there are non-detect results for fecal coliform shall use one-half the detection limit as the value for the non-detect results.

d. A "discrete" sample means any individual sample collected in less than 15 minutes.

e. For flow-rate measurements a "composite" sample means the arithmetic mean of no fewer than six individual measurements taken at equal time intervals for 24 hours, or for the duration of discharge, whichever is shorter.

For other than flow-rate a "composite" sample means a combination of no fewer than six individual flow-weighted samples obtained at equal time intervals for 24 hours, or for the duration of discharge, whichever is shorter. Flow-weighted sample means that the volume of each individual sample shall be proportional to the discharge flow rate at the time of sampling.

f. Acute toxicity is defined in the whole effluent testing procedures presented in this

permit in I.A.15.

g. Biosolids are non-hazardous sewage sludge or domestic septage as these terms are defined in 40 CFR 503.9.

PART II

II.A. MANAGEMENT REQUIREMENTS

II.A.1. **Change in Discharge** All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit. Any anticipated facility expansions, or treatment modifications which will result in new, different, or increased discharges of pollutants must be reported by submission of a new application or, if such changes will not violate the effluent limitations specified in this permit, by notice to the permit issuing authority of such changes. Any changes to the permitted treatment facility must comply with Nevada Administrative Code (NAC) 445A.283 to 445A.285. Pursuant to NAC 445A.263, the permit may be modified to specify and limit any pollutants not previously limited.

II.A.2. **Facilities Operation - Proper Operation and Maintenance** The Permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities, collection systems or pump stations installed or used by the Permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures.

II.A.3. **Adverse Impact - Duty to Mitigate** The Permittee shall take all reasonable steps to minimize releases to the environment resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. The Permittee shall carry out such measures, as reasonable, to prevent significant adverse impacts on human health or the environment.

II.A.4. **Non-compliance, Unauthorized Discharge, Bypass and Upset**

a. Any diversion, bypass, spill, overflow or discharge of treated or untreated wastewater from wastewater treatment or conveyance facilities under the control of the Permittee is prohibited except as authorized by this permit. In the event the Permittee has knowledge that a diversion, bypass, spill, overflow or discharge not authorized by this permit is probable, the Permittee shall notify the Administrator immediately.

b. The Permittee shall notify the Administrator within twenty-four (24) hours of any diversion, bypass, spill, upset, overflow or release of treated or untreated discharge than that which is authorized by the permit. A written report shall be submitted to the Administrator within five (5) days of diversion, bypass, spill,

overflow, upset or discharge, detailing the entire incident including:
i. Time and date of discharge;
ii. Exact location and estimated amount of discharge;
iii. Flow path and any bodies of water which the discharge reached;
iv. The specific cause of the discharge; and
v. The preventive and/or corrective actions taken.

c. The following shall be included as information which must be reported within 24 hours:
i. Any unanticipated bypass which exceeds any effluent limitation in the permit;
ii. Any upset which exceeds any effluent limitation in the permit;
iii. Violation of a limitation for any toxic pollutant or any pollutant identified as the method to control a toxic pollutant.

d. The Permittee shall report all instances of noncompliance not reported under Part II.A.4.b. at the time monitoring reports are submitted. The reports shall contain the information listed in Part II.A.4.b.

e. A "**bypass**" means the intentional diversion of waste streams from any portion of a treatment facility.
i. **Bypass not exceeding limitations** The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs a and b of this section.
ii. **Anticipated bypass** If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of bypass.

f. **Prohibition of Bypass.** Bypass is prohibited, and the Administrator may take enforcement action against a Permittee for bypass, unless:
i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.
ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
iii. The Permittee submitted notices as required under paragraph e of this section.

g. The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that it will meet the three conditions listed in paragraph f of this section.

h. An "**upset**" means an exceptional incident in which there is unintentional and

temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

i. **Effect of an upset** An upset constitutes an affirmative defense to an action brought for non-compliance with such technology-based permit effluent limitations if the requirements of paragraph j of this section are met.

j. **Conditions necessary for a demonstration of an upset** A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   i. An upset occurred and that the Permittee can identify the cause(s) of the upset;
   ii. The permitted facility was at the time being properly operated; and
   iii. The Permittee submitted notice of the upset as required under paragraph c of this section; and
   iv. The Permittee complied with any remedial measures required under II.A.3.

k. In selecting the appropriate enforcement option, the Administrator shall consider whether or not the noncompliance was the result of an upset. The burden of proof is on the Permittee to establish that an upset occurred.

II.A.5. **Removed Substances** Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollution from such materials from entering any navigable waters.

II.A.6. **Safeguards to Electric Power Failure** In order to maintain compliance with the effluent limitations and prohibitions of this permit the Permittee shall either:
   a. Provide at the time of discharge an alternative power source sufficient to operate the wastewater control facilities;
   b. Halt or reduce all discharges upon the reduction, loss, or failure of the primary source of power to the wastewater control facilities.

II.B. RESPONSIBILITIES

II.B.1. **Right of Entry**

The Permittee shall allow authorized representatives of the Division, upon the presentation of credentials, to:
   a. Enter upon the Permittee's premises where an effluent source is located or in which any records are kept under the terms and conditions of this permit;
   b. Have access to and to copy any records kept under the terms and conditions of this permit;
   c. Inspect any facilities, equipment, or operations related to compliance with this permit;
   d. Perform any necessary sampling or monitoring to determine compliance with this permit.

II.B.2. **Transfer of Ownership or Control** In the event of any change in control or ownership of facilities from which the authorized discharge emanates, the Permittee shall notify the succeeding owner or controller of the existence of this permit, by letter, a copy of which shall be forwarded to the Administrator. The Administrator may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary. All transfer of permits shall be approved by the Administrator.

II.B.3. **Availability of Reports** Except for data determined to be confidential under NRS 445A.665, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Administrator. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NRS 445A.710.

II.B.4. **Furnishing False Information and Tampering with Monitoring Devices** Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained by the provisions of NRS 445A.300 to 445A.730, inclusive, or by any permit, rule, regulation or order issued pursuant thereto, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the provisions of NRS 445A.300 to 445A.730, inclusive, or by any permit, rule, regulation or order issued pursuant thereto, is guilty of a gross misdemeanor and shall be punished by a fine of not more than $10,000 or by imprisonment. This penalty is in addition to any other penalties, civil or criminal, provided pursuant to NRS 445A.300 to 445A.730, inclusive.

II.B.5. **Penalty for Violation of Permit Conditions** Nevada Revised Statutes NRS 445A.675 provides that any person who violates a permit condition is subject to administrative and judicial sanctions as outlined in NRS 445A.690 through 445A.705.

II.B.6. **Permit Modification, Suspension or Revocation**

After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit; or
b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
e. There are material and substantial alterations or additions to the permitted facility or activity; or
f. The Administrator has received new information; or
g. The standards or regulations have changed; or

h. The Administrator has received notification that the permit will be transferred.

II.B.7. **Toxic Pollutants** Notwithstanding Part II.B.6. above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the Permittee so notified.

II.B.8. **Liability** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal, State or local laws, regulations, or ordinances.

II.B.9. **Property Rights** The issuance of this permit does not convey any property rights, in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

II.B.10. **Severability** The provisions of this permit are severable, and if any provision of this permit, or the application of any provisions of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

II.B.11. **Duty to Comply** The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination; revocation and reissuance, or modification; or denial of a permit renewal application.

II.B.12. **Need to Halt or Reduce Activity Not a Defense** It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

II.B.13. **Duty to Provide Information** The Permittee shall furnish to the Administrator, within a reasonable time, any relevant information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this permit. The Permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this Permit.

PART III

III.A. OTHER REQUIREMENTS

III.A.1. **Reapplication** If the Permittee desires to continue to discharge, he shall reapply not later than 180 days before this permit expires on the application forms then in use. POTW's with NPDES permits shall submit the sludge information listed at 40 CFR 501.15(a)(2) with the renewal application. The renewal application shall be accompanied by the fee

required by NAC 445A.232.

III.A.2. **Signatures, certification required on application and reporting forms**

a. All applications, reports, or information submitted to the Administrator shall be signed and certified by making the following certification.

"I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. All applications, reports or other information submitted to the Administrator shall be signed by one of the following:
   i. A principal executive officer of the corporation (of at least the level of vice president) or his authorized representative who is responsible for the overall operation of the facility from which the discharge described in the application or reporting form originates; or
   ii. A general partner of the partnership; or
   iii. The proprietor of the sole proprietorship; or
   iv. A principal executive officer, ranking elected official or other authorized employee of the municipal, state or other public facility.

c. **Duly Authorized Representative**
   All Discharge Monitoring Reports and any other information required by this permit or requested by the Administrator shall be signed by a person described in paragraph (b) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
   i. The authorization is made in writing by a person described in paragraph (b) of this section
   ii The authorization specifies either an individual or a position having responsibility environmental matters for the company, and
   iii. The authorization is submitted to the Division.

d. **Changes to Authorization**. If an authorization under paragraph c. of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph b. of this section must be submitted to the Administrator prior to or together with any reports, information, or applications to be signed by an authorized representative.

III.A.3. **Holding Pond Conditions** If any wastewater from the Permittee's facility is placed in ponds, such ponds shall be located and constructed

so as to:

a. contain with no discharge the once-in-the twenty-five year 24 hour storm at said location;
b. withstand without structural damage the once-in-one-hundred year flood of said location; and
c. prevent escape of wastewater by leakage other than as authorized by this permit.

III.A.4. **Flow Rate Notification** The Permittee shall notify the Administrator, by letter, not later than ninety (90) days after the 30-day average daily influent flow rate first equals or exceeds 85% of the design treatment capacity of the Permittee's facility given in Part I.A. above. The letter shall include:

a. The 30-day average daily influent flow rate;
b. The maximum 24-hour flow rate during the 30-day period reported above and the date the maximum flow occurred;
c. The Permittee's estimate of when the 30-day average influent flow rate will equal or exceed the design treatment capacity of the Permittee's facility; and
d. A status report on the treatment works which will outline but not be limited to past performance, remaining capacity of the limiting treatment and disposal units or sites, past operational problems and improvements instituted, modifications to the treatment works which are needed to attain the permitted flow rate due to changing site specific conditions or design criteria; and
e. The Permittee's schedule of compliance to provide additional treatment capacity before the 30-day average daily influent flow rate equals the present design treatment capacity of the Permittee's facility.

Attachment A Priority Pollutants

Base Neutral Extractables	Acid Extractables	Pesticides
Acenaphthene	2,4,6-Trichlorophenol	Aldrin
Benzidine	4-Chloro-3-methylphenol	Dieldrin
1,2,4-Trichlorobenzene	2-Chlorophenol	Chlordane (Technical)
Hexachlorobenzene	2,4-Dichlorophenol	4,4'-DDT
Hexachloroethane	2,4-Dimethylphenol	4,4'-DDE
Bis(2-chloroethyl) ether	2-Nitrophenol	4,4'-DDD
2-Chloronaphthalene	4-Nitrophenol	Endosulfan I
1,2-Dichlorobenzene	2,4-Dinitrophenol	Endosulfan II
1,3-Dichlorobenzene	2-Methyl-4,6-dinitrophenol	Endosulfan sulfate
1,4-Dichlorobenzene	Pentachlorophenol	Endrin
3,3'-Dichlorobenzidine	Pentachlorophenol	Endrin aldehyde
2,4-Dinitrotoluene	Phenol	Heptachlor
2,6-Dinitrotoluene		Heptachlor epoxide
1,2-Diphenylhydrazine	**Volatile Organics**	Alpha-BHC
Fluoranthene	Acrolein	Beta-BHC
4-Chlorophenyl phenyl ether	Acrylonitrile	Gamma-BHC (Lindane)
4-Bromophenyl phenyl ether	Benzene	Delta-BHC
Bis(2-Chloroisopropyl) ether	Carbon tetrachloride	PCB 1016
Bis(2-Chloroethoxy) methane	Chlorobenzene	PCB 1221
Hexachlorobutadiene	1,2-Dichloroethane	PCB 1232
Hexachlorocyclopentadiene	1,1,1-Trichloroethane	PCB 1242
Isophorone	1,1-Dichloroethane	PCB 1248
Naphthalene	1,1,2-Trichloroethane	PCB 1254
Nitrobenzene	1,1,2,2-Tetrachloroethane	PCB 1260
N-Nitrosodimethylamine	Chloroethane	Toxaphene
N-Nitrosodiphenylamine	2-Chloroethylvinylether	
N-Nitrosodi-n-propylamine	Chloroform	**Dioxins**
Bis(2-ethylhexyl) phthalate	1,1-Dichloroethene	TCDD
n-Butyl benzyl phthalate	Trans-1,2-Dichloroethene	
Di-n-butyl phthalate	1,2-Dichloropropane	**Metals**
Di-n-octyl phthalate	1,3-Dichloropropene	Antimony
Diethyl phthalate	Ethylbenzene	Arsenic
Dimethyl phthalate	Dichloromethane	Beryllium
Benzo(a)anthracene	Chloromethane	Cadmium
Benzo(a)pyrene	Bromomethane	Chromium
Benzo(b)fluoranthene	Bromoform	Copper
Benzo(k)fluoranthene	Bromodichloromethane	Lead
Chrysene	Dibromochloromethane	Mercury
Acenaphthylene	Tetrachloroethene	Nickel
Antracene	Toluene	Selenium
Benzo(g,h,i)perylene	Trichloroethene	Silver
Fluorene	Vinyl chloride	Thallium
Phenanthrene		Zinc
Dibenzo(a,h)anthracene		
Indeno(1,2,3-cd)pyrene		**Other**
Pyrene		Cyanide
		Asbestos

Appendix B - Memorandum Office of the Solicitor, Pacific Southwest Region, October 21, 2005

ATTORNEY-CLIENT COMMUNICATION – ATTORNEY-CLIENT PRIVILEGED

United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
Room E-1712
Sacramento, California 95825-1890

RECEIVED
MAR 21 2007
BUREAU OF RECLAMATION
Lahontan Basin Area Office

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FA

IN REPLY
REFER TO:

October 21, 2005

FAX TRANSMITTAL
OPTIONAL FORM 99 (7-90)
# of pages ▸ 7
To PETE NIELSEN
Dept./Agency
From RICHARD GRUNZ
Phone #
Fax # 884-8376
Fax #
NSN 7540-01-317-7388
5099-101
GENERAL SERVICES ADMINISTRATION

To: Project Manager, Stillwater National Wildlife Refuge
Senior Realty Specialist, Stillwater National Wildlife Refuge

From: Regional Solicitor, Pacific Southwest Region

Subject: Use of Newlands Project Facilities to Deliver Non-project Water to Lahontan Valley Wetlands

This memorandum responds to your inquiry regarding the above captioned subject. Specifically, your questions were

1. Does Section 206(a)(3) of Public Law 101-618 authorize the use of Newlands Project facilities to deliver non-project water to Lahontan Valley wetlands?

2. If so, is a contract under the Warren Act (43 U.S.C. 523-525) required to deliver non-project water through the Newlands Project to the Lahontan Valley wetlands?

First, we examine your question regarding the use of Newlands Project (Project) facilities for the delivery of non-project water to the Lahontan Valley wetlands (Wetlands). Your inquiry raises the issue of whether P.L. 101-618 authorizes the Secretary to acquire non-project water and water rights for use on the Wetlands. We conclude that it does. We also conclude that the Secretary has the authority to use Project facilities to deliver acquired non-project water to the Wetlands. Second, we examine your question of whether a Warren Act contract is required for any proposed transfer of non-project water to the Wetlands. We conclude that the Warren Act does not apply to deliveries by the Secretary of non-project water to the Wetlands. However, all transfers and deliveries of non-project water to the Wetlands must comply with P.L. 101-618 section 209(b), and must satisfy the trust obligations of the Secretary to the Pyramid Lake Pauite and the Fallon Pauite Shoshone Tribes.

1 – Truckee-Carson-Pyramid Lake Water Rights Settlement Act

Among the purposes of Title II of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act), P. L. 101-618, 104 Stat. 3294, Nov. 16, 1990, Congress authorized the acquisition of water rights for fish and wildlife, and sought to "protect

significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands." § 202(c), (g). Section 206 of the Settlement Act designates approximately 77,520 acres of federal land as the Stillwater National Wildlife Refuge (SNWR) for the Service to manage under the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd et seq., as part of the National Wildlife Refuge System (NWRS). §§ 206(b)(1), (2), (3). [1] It also creates a willing seller program for the acquisition of water and water rights to sustain 25,000 acres of primary wetlands on a long-term basis, and allows the Secretary to use federal water facilities to deliver that water to the Wetlands. [2]

Subsection 206(a) states, in part,

> (1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection.

§ 206(a)(1). [3] Subsection 206(a) further provides, in relevant part, that

> (2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:
>
> (A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;
>
> (B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests…; and

[1] The Refuge was originally part of the Stillwater Wildlife Refuge and Management Area (SWMA), which was established by the 1948 Triparte Agreement between the State of Nevada (State), Truckee-Carson Irrigation District (TCID), and the Service. At that time, the entire area was public land under the jurisdiction of the Bureau of Reclamation (Reclamation) for Project purposes. *See* Final Environmental Impact Statement, Water Rights Acquisition for Lahontan Valley Wetlands, at 1-14, Sept. 1996 (WRAP EIS). Subsection 206(b) of the Settlement Act effectively transferred jurisdiction over approximately 77,520 acres of that land, and all interests associated with it, to the Service to manage as a part of the NWRS.

[2] The Wetlands include lands associated with the SNWR, SWMA, Fallon Paiute-Shoshone Indian Reservation, and Carson Lake and Pasture. § 203(e).

[3] The State acquires water for the Carson Lake and Pasture. Those lands are in the process of being transferred out of the jurisdiction of the U.S. and to the State. *See* § 206(e).

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall first prepare a record of decision on the basis of such consultations.

(3) the Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

§§ 206(a)(2)(A), (B), (C); 206(a) (3)(A), (B), (C) (Emphasis added).

A – Does the Settlement Act authorize the Secretary to acquire non-project water and water rights for use on the Wetlands?

The language of the Settlement Act gives the Secretary the authority to acquire "water" and "water rights" to use for the preservation of the Wetlands. The statute, however, fails to define the term "water." "Water" is ambiguous in this context because the statute implicates the operation of a federal reclamation project to achieve certain goals of the legislation. "Water," therefore, can mean either "project water" or "non-project water," or it can encompass both types. This ambiguity can be resolved by applying basic canons of statutory construction to discern the word's meaning. [4]

[4] The Service interprets the Settlement Act as giving the Secretary the authority to acquire both project and non-project water for the Wetlands. In its WRAP EIS, the Service discussed, as part of its preferred alternative, using non-project water from the Middle Carson Basin as a source of water for the Wetlands.

"It is a fundamental canon that the words of a statute must be read in their context with a view to their place in the overall statutory scheme." FDA v. Brown Williamson Tobacco Corp., 529 U.S. 120, 133 (2001). Section 206(a) provides the authorization for the Secretary to "acquire by purchase or otherwise water and water rights...and to transfer, hold, and exercise such rights...to sustain, on a long-term average, approximately 25,000 acres of primary wetlands" in the Lahontan Valley. Subsection 206(a)(2)(C) provides that before the Secretary acquires water or water rights in California to use on the Wetlands, the Secretary must consult with the Governor and prepare a record of the decision based on those consultations. This shows that Congress authorized the Secretary to reach beyond the available water and water rights within the Project to acquire water for the Wetlands. This is so because no California lands are serviced by the Project.

Additionally, Congress distinguished between project and non-project water in the statute itself. In subsection 205(b)(1), Congress authorized the Secretary to allow storage of non-project water in the Lake Tahoe Dam, Truckee Storage, and Washoe Projects. "Where Congress includes particular language in one section of a statue but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Russello v. United States, 464 U.S. 16, 23 (1983). Since Congress used the phrase "non-project water" in one subsection, but did not use it in the subsection addressing acquisition of water and water rights for the Wetlands, the word "water" alone must therefore encompass both project and non-project water in this context. Examining the word "water" in these contexts, therefore, leads to the conclusion that its definition should encompass both project and non-project water and water rights.

B – Does the Settlement Act authorize the Secretary to use the Project facilities to deliver non-project water to the Wetlands?

Section 206(a)(3)(A) authorizes the Secretary to "use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water" to the Wetlands. The language of this provision is plain. As concluded above, the Secretary can acquire both project and non-project water and water rights for the Wetlands. The Project is a "federal water diversion, storage, and conveyance system." It follows that section 206(a)(3)(A) allows the Secretary to use the Project to deliver non-project water acquired by her to the Wetlands to fulfill the Settlement Act's mandate. Next, we address the applicability of the Warren Act to these deliveries.

2 – The Warren Act and Section 305 of the Reclamation States Emergency Drought Act

In 1911, Congress enacted the Warren Act, 43 U.S.C. 523, which states in relevant part,

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See WRAP EIS, at 2-28 to 2-35. Since the Service has yet to utilize non-project water as a source for the Wetlands, we thought a discussion of this issue was in order.

> [W]henever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems..., individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however*, That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects...

43 U.S.C. 523. [5] The Warren Act, therefore, limits the use of excess capacity to non-project water used for irrigation purposes by those requesting the contract. WTR P04, at 3.

In 1992, Congress supplemented the Warren Act by passing Section 305 of the Reclamation States Emergency Drought Act of 1991 (Drought Act), P.L. 102-250, 106 Stat. 59, March 2,1992. [6] This provision authorized the Secretary to enter into contracts pursuant to the Warren Act, with "municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities," for the,

> [I]mpounding, storage and carriage of non-project water for domestic, municipal, fish and wildlife, industrial and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura Project, California, the Truckee Storage Project and the Washoe Project, California and Nevada.

43 U.S.C. 2245. [7] Thus, the Warren Act as supplemented, authorizes the Secretary to enter into contracts with a variety of entities for the use of federal reclamation facilities to

---

[5] Reclamation defines excess capacity as "diversion, storage, conveyance, or pumping capacity in the project facilities which is excess to that needed to achieve a Reclamation project's authorized purpose." Bureau of Reclamation Policy Manual, WTR P04, at 2, January 10, 2001 (WTR P04).

[6] This section is codified at 43 U.S.C. 2245.

[7] Congress previously authorized the Secretary to store non-project water in the Truckee and Washoe Projects for Settlement Act purposes. § 205(b)(1). Since Congress is presumed to legislate knowing existing law, we can only conclude that in section 305 of the Drought Act, it sought to authorize the Truckee and Washoe projects to store and carry non-project water for non-Settlement Act purposes. *See* Miles v. Apex Marine, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation.").

store and transport non-project water for irrigation purposes, and for non-irrigation purposes only in those facilities that Congress has specifically authorized. [8]

Does the Warren Act apply to the delivery of non-project water acquired by the Secretary for Wetlands use?

As stated above, section 206(a)(3)(A) of the Settlement Act authorizes the use of Project facilities to deliver non-project water acquired by the Secretary for the Wetlands. A question exists, however, as to whether the Warren Act applies to these deliveries. We conclude that the Warren Act does not apply to non-project water deliveries by the Secretary to the Wetlands.

Section 206(a)(3)(A) of the Settlement Act specifically authorizes the Secretary to utilize federal water diversion, storage, and conveyance systems to deliver water to the Wetlands. Congress also specifically provided that the Secretary pay "non-federal entities" that may operate the Project for the customary costs associated with the delivery of the acquired water. § 206(a)(3)(B). [9] Furthermore, the Settlement Act provides the authorization to enter into contracts for the payment of these costs. § 206(a)(3)(C).

All water acquired by the Secretary for use on the Wetlands in accordance with State law and applicable Decrees can be delivered to the Wetlands through the Project without a Warren Act contract. To be practical, however, it is recommended that there be some type of contract for deliveries to the Wetlands between the Service, Reclamation, and TCID pursuant to subsection 206(a)(3)(c). Please note that if a contract is negotiated for the payment of reasonable costs associated with deliveries of water to the Wetlands, the United States is liable for those costs. *See id.* All transfers and deliveries of non-project water, however, are subject to Section 209(b) of the Settlement Act. Subsection 209(b) states that no provision of the Act can be implemented in a way that would 1) increase diversions of the Truckee River water to the Project over allowed by applicable operating criteria and procedures, or 2) conflict with applicable decrees.

To summarize, pursuant to the Settlement Act, the Secretary may acquire non-project water and water rights to sustain primary wetland habitat, which includes lands on the Refuge. She may also use the Project to deliver that water to the Wetlands to fulfill her mandate to sustain the Wetlands on a long-term basis. The Warren Act does not apply when the Secretary seeks to use the Project to deliver water that was acquired pursuant to the Settlement Act to the Wetlands.

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[8] Congress seems to supplement the Warren Act on a case-by-case basis. Recently, Congress supplemented the Warren Act to authorize the Secretary to contract with certain entities to use the excess capacity in specific federal reclamation projects for a variety of purposes. P.L. 106-549, 114 Stat. 2743, Dec. 19, 2000; P.L. 106-467, 114 Stat. 2026, Nov. 9, 2000; P.L. 106-368, 114 Stat. 1416, Oct. 27, 2000. The projects authorized are Mancos Project, Colorado, the Solano Project, California, and the Weber Basin Project, Utah, respectively.

[9] An early version of the bill named TCID as one non-federal entity operating "existing water transport facilities." S. 1554, 135 Cong Rec. S10296, 10299, Aug. 4, 1989.

ATTORNEY-CLIENT COMMUNICATION – ATTORNEY-CLIENT PRIVILEGED

If you have any questions please call Veronica Rowan at 916-978-5675.

Dan Shillito
Regional Solicitor

By: Veronica Rowan
Assistant Regional Solicitor

cc:
Marge Kolar
Assistant Manager, Refuges and Wildlife, CNO

Dan Walsworth
Refuge Supervisor, CNO

Betsy Rieke
Area Manager, LBAO

Steve Palmer
SOL-SAC

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